IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Prema Vs. State of Raj.
(D.B. Criminal Appeal No.934/2001)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 20-10-2001 in Sessions Case No.27/2000 passed by Sh. Bhanwar Singh Bhati, Additional Sessions Judge Malpura District Tonk.

Date of Judgment: July 02, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE R.S.CHAUHAN

Mr. Inder Raj Saini] for the appellant.
Mr. Munindra Singh]

Mr. B.K. Sharma, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

The gravamen of the charge put against the appellant Prema was that he committed rape on the prosecutrix (name withheld by us), a girl of eleven years of age. Learned trial Judge vide judgment dated October 20, 2001 found the appellant guilty and convicted and sentenced him thus:-

U/s.376 IPC:

To suffer imprisonment for life and fine of Rs.50000/-, in default to further suffer imprisonment for two years.

U/s.450 IPC:

To suffer rigorous imprisonment for ten years and fine of Rs.20000/-, in default to further suffer imprisonment for one year.

The substantive sentences were ordered to run concurrently.

2. The prosecution case is founded on the Parcha Bayan of the prosecutrix recorded by the SHO Police Station Todarai Singh on August 16, 2000 wherein she stated that on the said day around 12 in the Noon while she was alone in her house, the appellant entered the house and committed rape on her. Charges under sections 376 and 450 IPC were framed against the appellant, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 19 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence. Three witnesses in defence were examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. After assailing the finding of conviction of the appellant from various angles learned counsel for the appellant ultimately proceeded to urge on the quantum of sentence. According to learned counsel, awarding sentence to suffer imprisonment for life is too harsh in the facts and circumstances of the instant case. Learned Public Prosecutor on the other hand supported the impugned judgment in toto.

4. Having closely scanned the material on record we noticed following features of the case:-

(i) Age of prosecutrix was below 12 years on the date of offence.
(ii) Age of appellant was 35 years and there was nobody in the house to look after his wife, two daughters and one son.
(iii) As per medical examination report (Ex.P-2) of the

prosecutrix there were signs of profuse vaginal bleeding and tear 2½ x 1 x 1½ cm was found over antero left lateral vaginal wall. (iv) From the testimony of prosecutrix and other documentary evidence the guilt of rape found established beyond reasonable doubt.

5. The charge of rape and sexual aggression in the present set up of our society involves disgrace to victim's family, especially when prosecutrix is of tender age. Rape is a crime against basic human rights and is also violative of the victims most cherished of the fundamental rights, mainly Right to Life contained in Article 21. According to Section 376 the person guilty of rape can be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years. Sub section (2) of Section 376 IPC mandates that whoever commits rape on a woman when she is under 12 years of age shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine.

6. Their Lordships of the Supreme Court in Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat (AIR 1983 SC 753) had occasion to consider the question of sentence and indicated in para 13 as under:-

> "The only question that now remains to be considered is as regards the sentence. The appellant has behaved in a shockingly indecent manner. The magnitude of his offence cannot be over emphasised in the context of the fact that he misused his position as a father of a girl friend of PW.1 and PW.2. PW.1 and PW.2 were visiting his house unhesitatingly because of the fact that his daughter was their friend. To have misused this position and to have tricked them into entering

> the house, and to have taken undue advantage of the situation by subjecting them to sexual harassment, is a crime of which a serious view must be taken. But for the following facts and circumstances, we would not have countenanced the prayer for leniency addressed to us on behalf of the appellant. The special circumstances are these. The appellant has lost his job in view of the conviction recorded by the High Court. The incident occurred some 7 years back. The appeal preferred to the High Court was dismissed on Nov. 15, 1976. About 6-1/2 years have elapsed thereafter."

7. Hon'ble Supreme Court in Dinesh Vs. State of Rajasthan (2006) 3 SCC 771 indicated that normal sentence in a case where rape is committed on a child below 12 years of age, is not less than 10 years RI. It was observed in para 13 thus:-

> "The legislative mandate to impose a sentence, for the offence of rape on a girl under 12 years of age, for a term which shall not be less than 10 years, but which may extend to life and also to fine reflects the intent of stringency in sentence. The proviso to Section 376(2) IPC, of course, lays down that the court may, for adequate and special reasons to be mentioned in the judgment, impose sentence of imprisonment of either description for a term of less than 10 years. Thus, the normal sentence in a case where rape is committed on a child below 12 years of age, is not less than 10 years' RI, though in exceptional cases "for special and adequate reasons" sentence of less than 10 years' RI can also be awarded. It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso particularly in such like penal provisions. The courts are obliged to respect the legislative mandate in the matter of awarding of sentence in all such cases. Recourse to the proviso can be had only for "special and adequate reasons" and not in a casual manner. Whether there exist any "special and adequate reasons" would depend upon a variety of factors and the peculiar facts and circumstances of each case. No hard and fast rule can be laid down in that behalf of universal application."

8. In Pramod Mehto Vs. State of Bihar (AIR 1989 SC 1475) the Apex Court held that where there are no special circumstances to call for the

imposition of maximum sentence of imprisonment for life, the ends of justice would be met by awarding minimum sentence of ten years rigorous imprisonment as it is by itself a severe punishment.

9. In the instant case we do not see special circumstances to call for the imposition of maximum sentence of imprisonment for life. In view of the fact that appellant's wife and his three children have been struggling for their livelihood, the ends of justice would be met by awarding minimum sentence of ten years rigorous imprisonment as it is by itself a severe punishment.

10. For the reasons aforementioned, we partly allow the appeal and while maintaining the conviction of the appellant under section 376 IPC we reduce his sentence from imprisonment for life to rigorous imprisonment for ten years and fine of Rs.5,000/- in default to further suffer one year rigorous imprisonment. We however maintain his conviction and sentence under section 450 IPC. Substantive sentences shall run concurrently.

The impugned judgment of learned trial court stands modified as indicated above.

(R.S.Chauhan),J. (Shiv Kumar Sharma)J.

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